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8	NORTHERN DISTR	ICT OF CALIFORNIA		
9	SAN FRANCI	SCO DIVISION		
10				
11	IN RE: CATHODE RAY TUBE (CRT)	MASTER FILE NO. 07-cv-5944 SC		
12	ANTITRUST LITIGATION	MDL NO. 1917		
13	This Document Relates to:	PLAINTIFFS' JOINT OPPOSITION TO		
14	All Indirect Purchaser Actions	HITACHI PARTIES' MOTION FOR SUMMARY JUDGMENT BASED UPON		
15 16	Electrograph Systems, Inc., et al. v. Hitachi, Ltd., et al., No. 3:11-cv-01656-SC	THE LACK OF EVIDENCE OF PARTICIPATION IN THE ALLEGED CONSPIRACY		
17	Alfred H. Siegel as Trustee of the Circuit City Stores, Inc. Liquidating Trust v. Hitachi, Ltd.	ORAL ARGUMENT REQUESTED Date: February 6, 2015		
18	Stores, Inc. Liquidating Trust v. Hitachi, Ltd., et al., No. 3:11-cv-05502-SC	Time: 10:00 a.m. Before: Hon. Samuel Conti		
19	Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al., No. 3:11-cv-05513-SC;	REDACTED VERSION OF DOCUMENT		
20	Target Corp, et al. v. Chunghwa Picture	SOUGHT TO BE SEALED		
21	Tubes, Ltd., et al., No. 3:11-cv-05514-SC			
22	Sears, Roebuck and Co. and Kmart Corp. v. Chunghwa Picture Tubes, Ltd., No. 3:11-cv-			
23	05514-SC			
24	Interbond Corporation of America, d/b/a BrandsMart USA v. Hitachi, et al., No. 3:11-			
25	cv-06275-SC;			
26	Office Depot, Inc. v. Hitachi, Ltd., et al., No.			
27	3:11-cv-06276-SC;			
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1	CompuCom Systems, Inc. v. Hitachi, Ltd., et
2	al., No. 3:11-cv-06396-SC
3	Costco Wholesale Corporation v. Hitachi, Ltd., et al., No. 3:11-cv-06397-SC;
4	P.C. Richard & Son Long Island Corporation,
5	et al. v. Hitachi, Ltd., et al., No. 3:12-cv- 02648-SC;
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7	Schultze Agency Services, LLC on behalf of Tweeter OPCO, LLC and Tweeter Newco, LLC
8	v. Hitachi, Ltd., et al., No. 3:12-cv-02649-SC;
9	Tech Data Corporation, et al. v. Hitachi, Ltd., et al., No. 3:13-cv-00157-SC
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1	In re Vitamins Antitrust Litig. 320 F. Supp. 2d 1 (D.D.C. 2004)
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7	<i>United States v. Perlaza</i> 439 F.3d 1149 (9th Cir. 2006)
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9	575 F.3d 900 (9th Cir. 2009)
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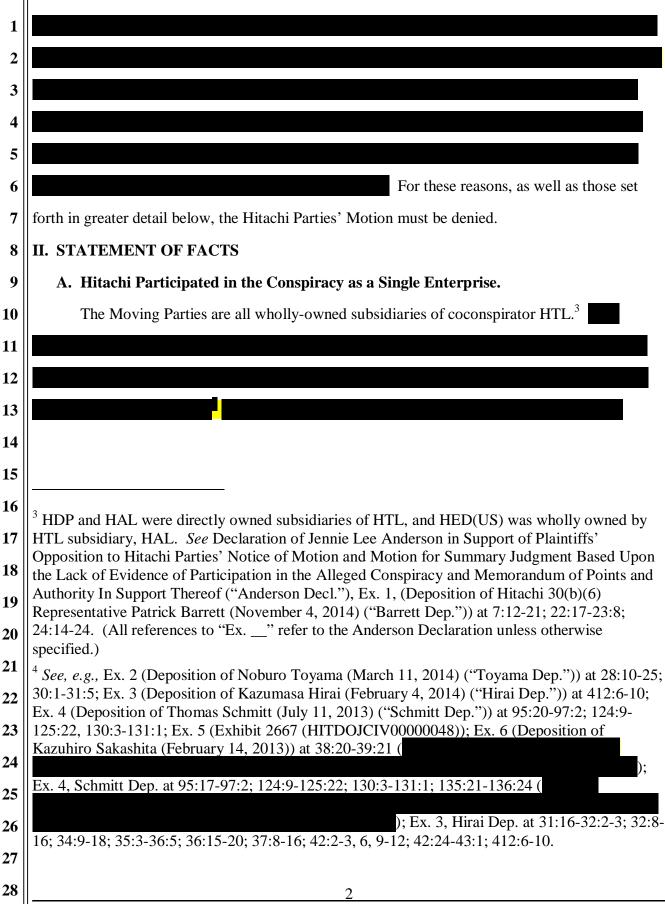
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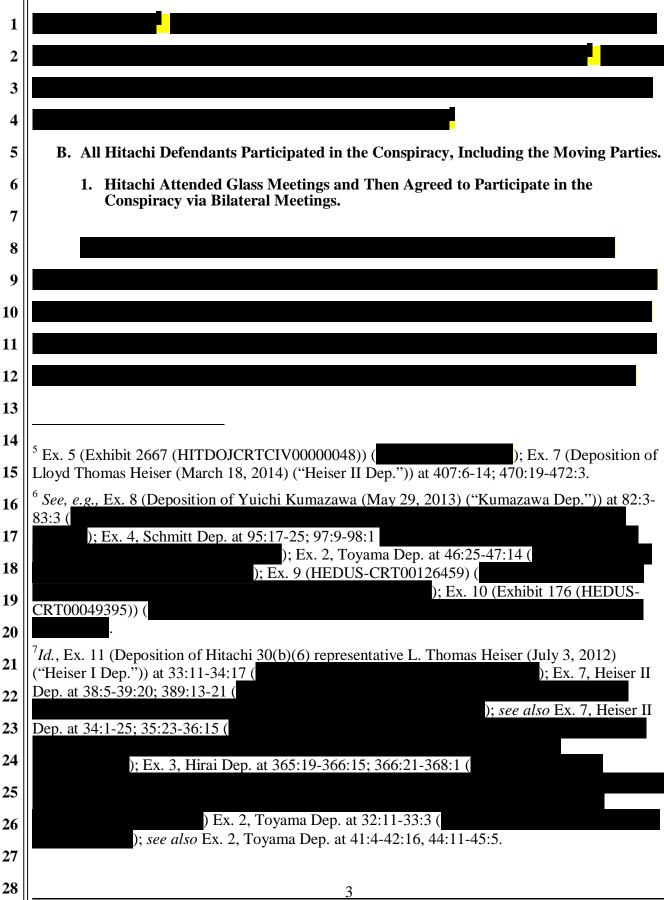
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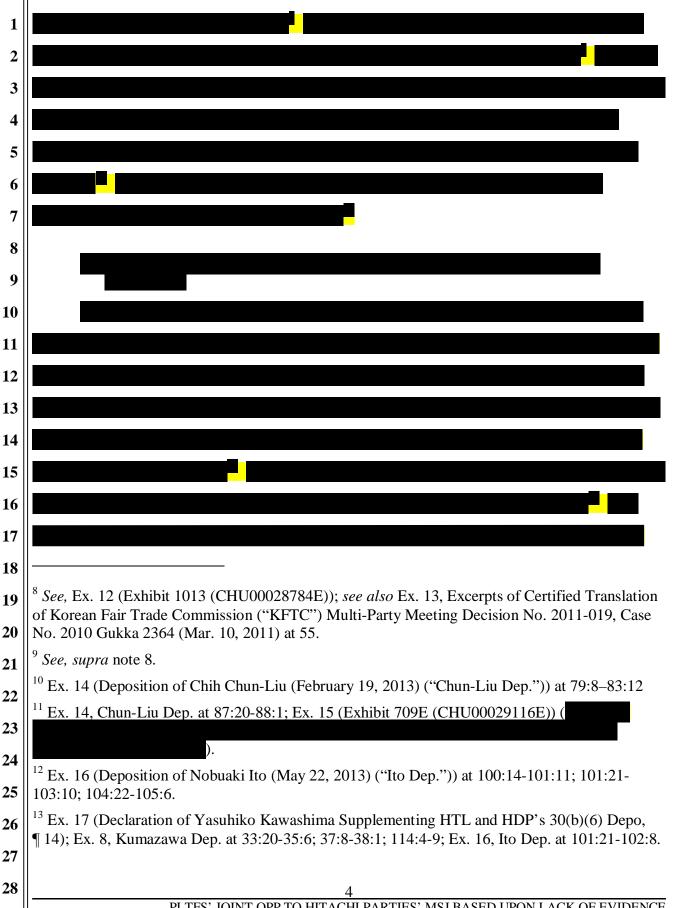
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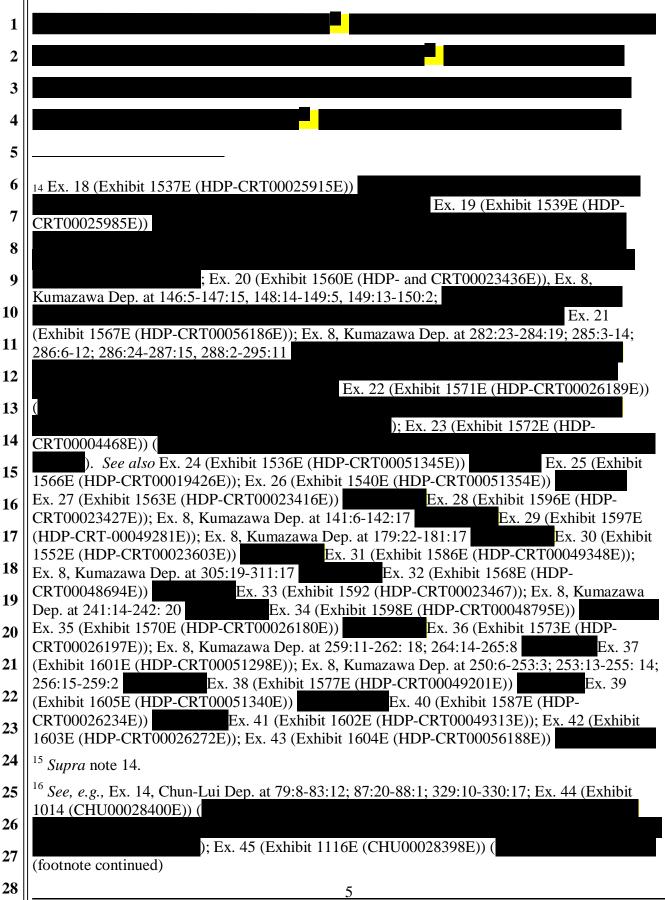
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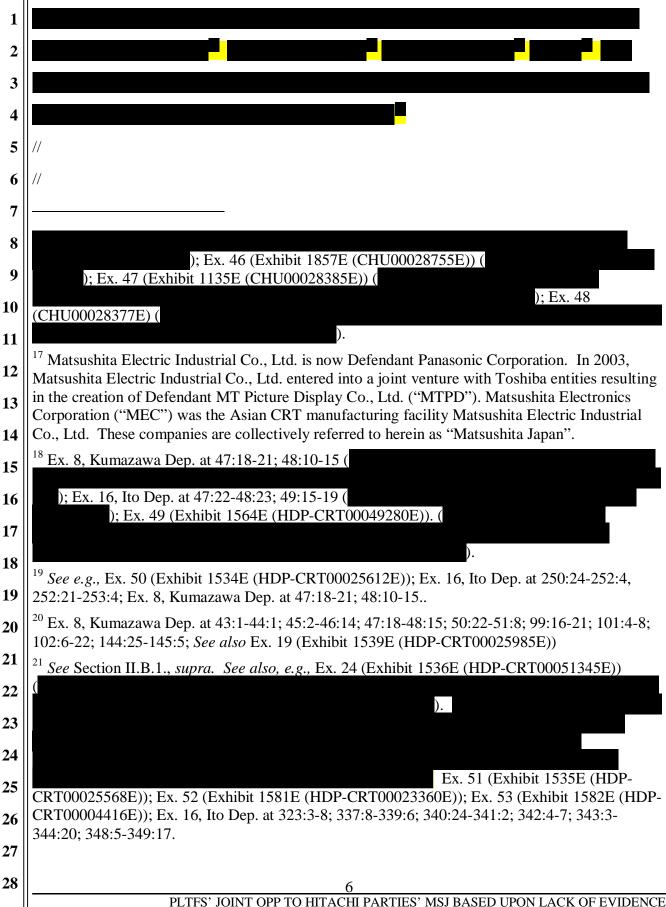
The Indirect Purchaser Plaintiffs and the undersigned Direct Action Plaintiffs (collectively, "Plaintiffs") hereby submit this Joint Opposition to Hitachi Parties' Motion for Summary Judgment Based Upon Lack of Evidence of Participation in the Alleged Conspiracy ("MSJ" or "Motion") [Dkt. No. 2976], filed with this Court on November 7, 2014. I. SUMMARY OF ARGUMENT Hitachi<sup>1</sup> played a core role in the global CRT conspiracy, which required the coordination and participation of each Hitachi Defendant as orchestrated by parent company, HTL. The Hitachi Defendants do not deny the existence of the CRT conspiracy. Nor do they contend that Plaintiffs have insufficient evidence to proceed to trial against HTL and its Asian sales subsidiary, HAS. Nevertheless, unable to refute the overwhelming evidence against Hitachi as a whole, three of the Hitachi Defendants—HED(US), HAL and HDP (collectively, the "Moving Parties")—seek to distance themselves from the corporate enterprise that served the conspiracy so well, arguing that this Court should consider the separate evidence against each Moving Party in a vacuum. However, it is well settled that conspiracy evidence cannot be viewed with such tunnel vision. "The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." Cont'l Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 699 (1962) (citation omitted). When viewed as a whole, abundant evidence shows that each of the three Moving Parties participated in the conspiracy and are, therefore, liable for the acts of the Hitachi Defendants and the other coconspirators during the Conspiracy Period.<sup>2</sup> "'Hitachi" or "Hitachi Defendants" refers to Hitachi, Ltd. ("HTL"), Hitachi Asia, Ltd. ("HAS"), Hitachi America, Ltd. ("HAL"), Hitachi Displays, Ltd. ("HDP"), Hitachi Electronic Devices, USA ("HED(US)") and Shenzhen SEG Hitachi Color Displays Devices, Ltd. ("Hitachi Shenzhen"). Defendant Hitachi Shenzhen no longer exists and has never appeared in this case. <sup>2</sup> The "Conspiracy Period" refers to the time period of March 1, 1995 to November 25, 2007.

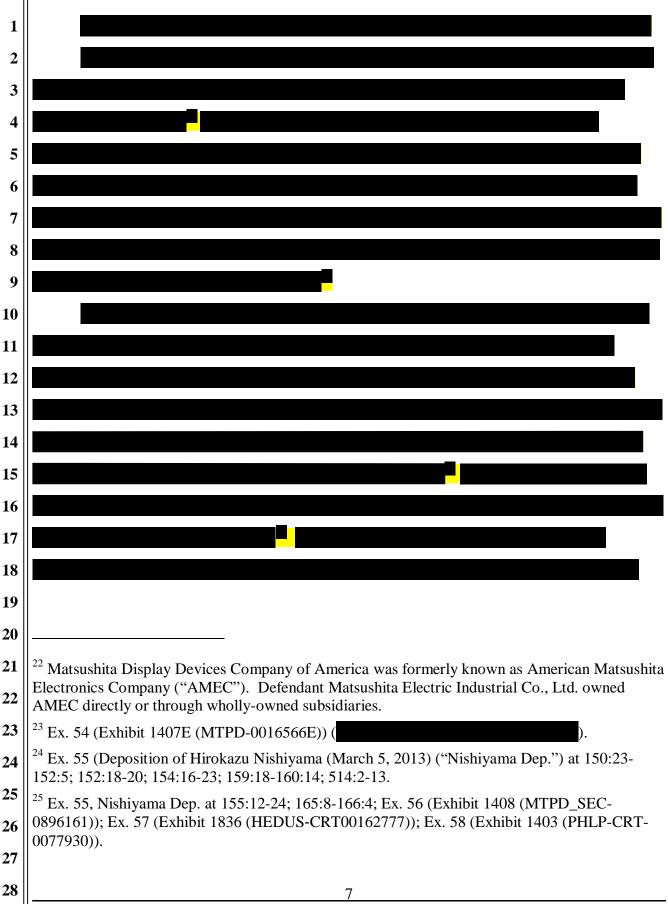


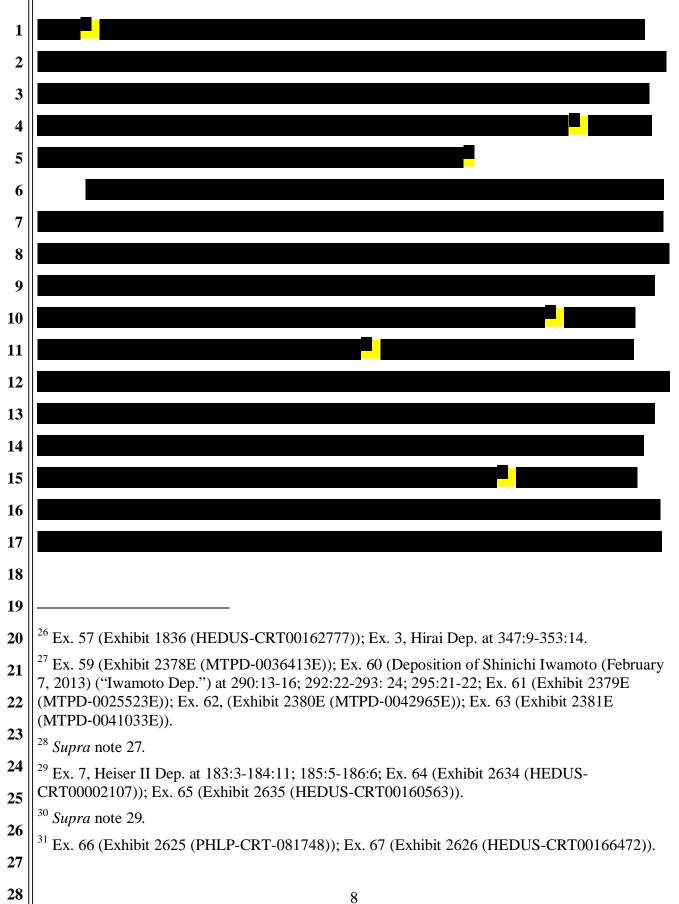


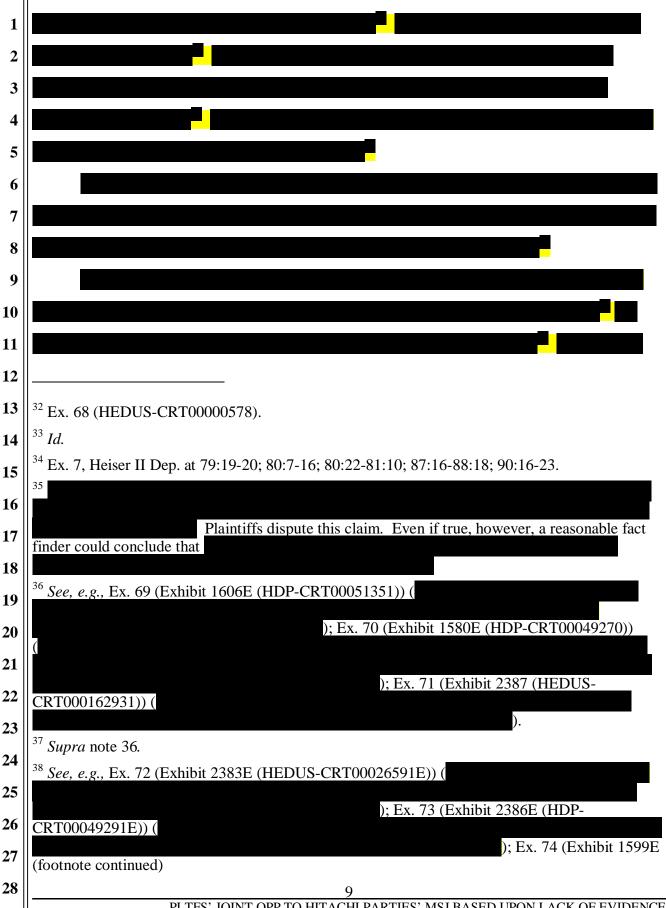


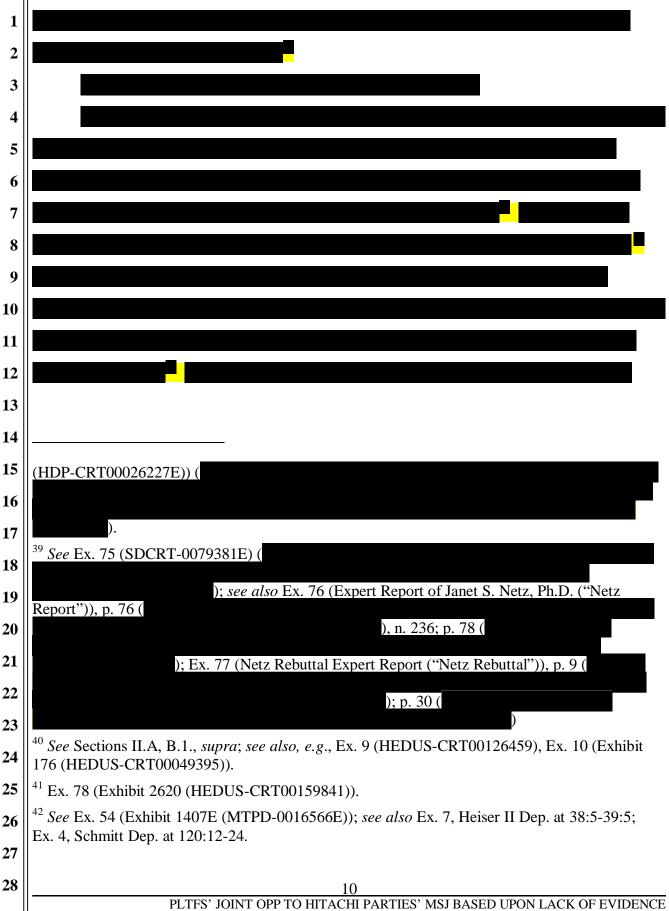


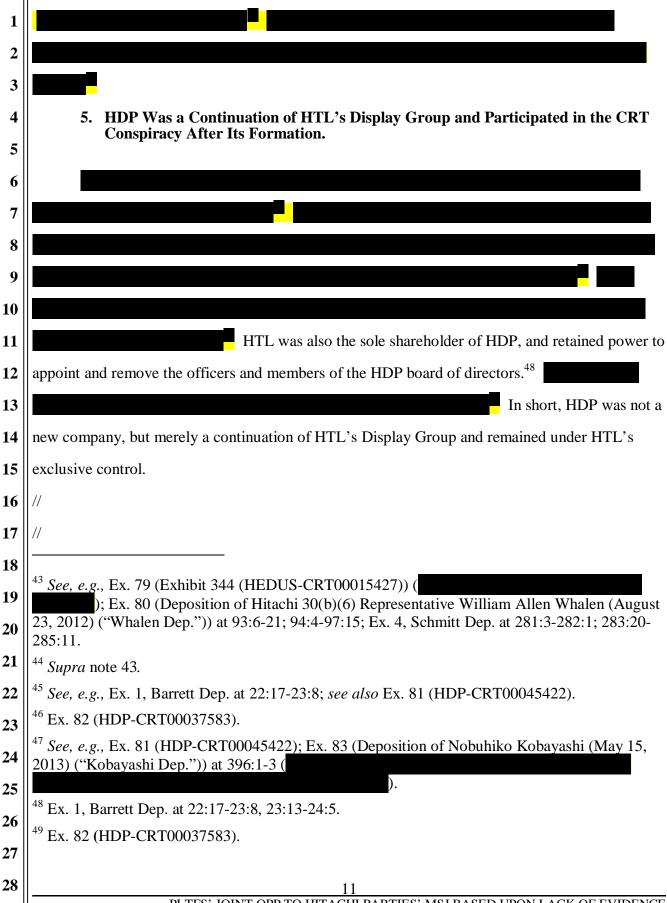


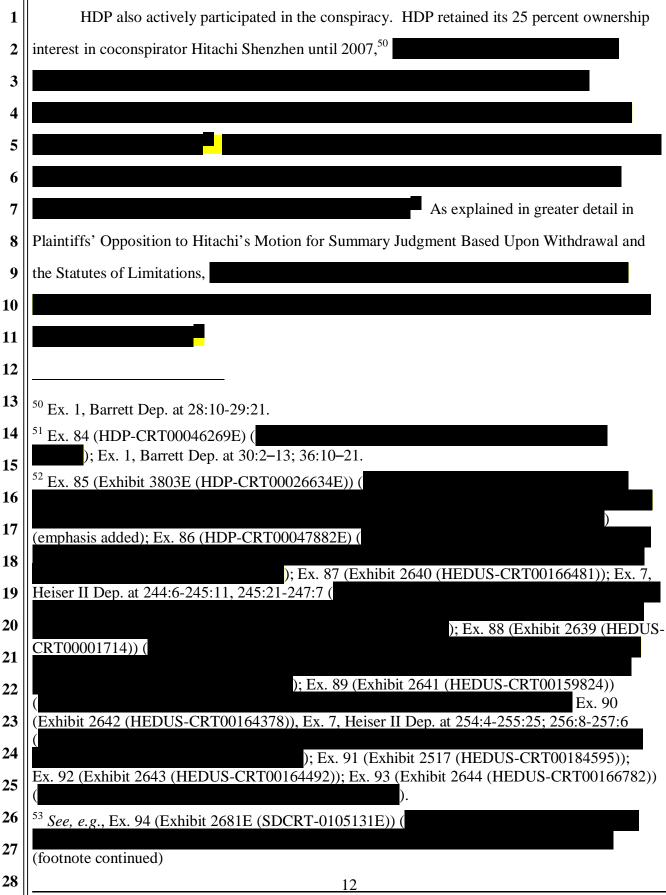


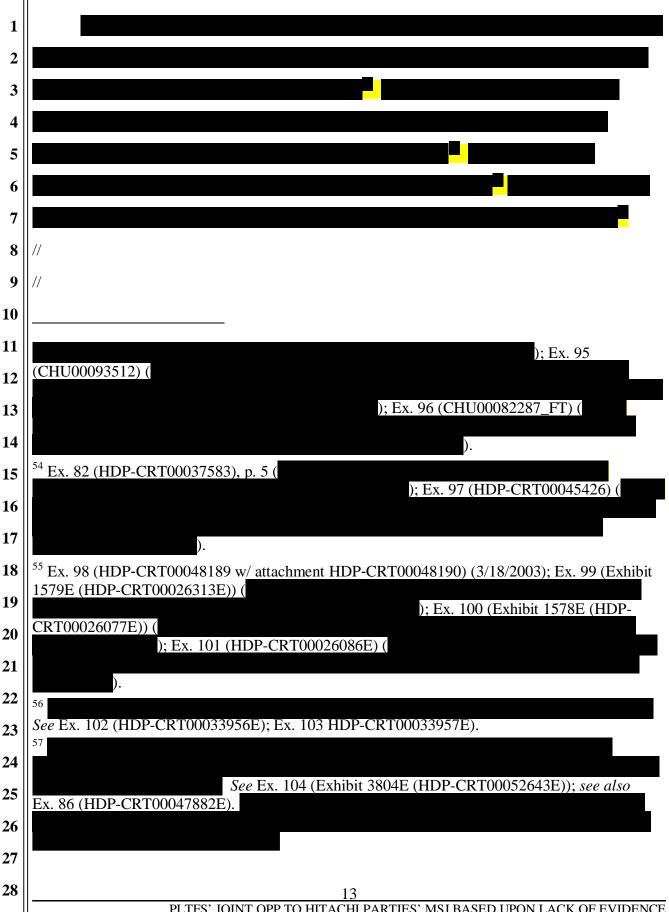












1	C. There Is No Legitimate Business Justification for the Moving Parties' Actions.
2	There is no business justification for the Moving Parties' actions described herein other
3	than to reap the benefits of the conspiracy. <sup>58</sup>
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8	III. SUMMARY JUDGMENT STANDARD
9	On a motion for summary judgment, the moving party bears the burden of showing the
10	absence of any genuine issue of material fact. Beltz Travel Serv. Inc. v. Int'l Air Transp. Assoc.,
11	620 F.2d 1360, 1364 (9th Cir. 1980) (citation omitted). In evaluating a motion for summary
12	judgment, this Court should "view the evidence and the inferences which may be drawn therefrom
13	in the light most favorable to the nonmoving party." <i>Id.</i> (citations omitted). "[T]hese general
14	standards are applied even more stringently and summary judgments granted more sparingly
15	'in complex antitrust litigation where motive and intent play leading roles, [because] the proof is
16	largely in the hands of the alleged conspirators and hostile witnesses thicken the plot." <i>Id.</i> at
17	1364-65 (quoting <i>Poller v. Columbia Broad. Sys.</i> , 368 U.S. 464, 491 (1962)).
18	IV. ARGUMENT
19	Ample direct and circumstantial evidence creates genuine issues of fact regarding the
20	Moving Parties' participation in the conspiracy. Indeed, the record is replete with both testimonial
21	and documentary evidence
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24	<sup>58</sup> See Ex. 76, Netz Report, pp. 31-33; See also Ex. 77, Netz Rebuttal, pp. 35-36 (
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26	<sup>59</sup> <i>See</i> , <i>e.g.</i> , Ex. 16, Ito Dep. at 189:1-7.
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1	Such evidence soundly rebuts the Moving Parties' claim that "all		
2	the direct evidence in the record" tends to refute the allegations against them. 60 The Moving		
3	Parties have failed to carry their burden of establishing an absence of genuine issues of material		
4	fact. Summary judgment must be denied.		
5			
6	A. The Evidence of Each Moving Party's Participation Must Be Considered in the Context of the Conspiracy as a Whole.		
7	The Moving Parties do not dispute the existence of the CRT price-fixing conspiracy. By		
8	excluding HAS and HTL from this motion, the Moving Parties also implicitly concede the		
9	sufficiency of the evidence linking both of these entities to the CRT conspiracy. Nevertheless, the		
10	Moving Parties urge this Court to ignore the body of conspiracy evidence and strictly		
11	compartmentalize the evidence it reviews on a defendant-by-defendant basis. See MSJ at 12-15.		
12	But it is well established that viewing conspiracy evidence in a vacuum is inappropriate.		
13	"[P]laintiffs should be given the full benefit of their proof without tightly compartmentalizing the		
14	various factual components and wiping the slate clean after scrutiny of each." Cont'l Ore, 370		
15	U.S. at 699.		
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18	60 MSI at 11.12. The so called "direct avidence" that the Maying Porties contand should		
19	Wish at 11-12. The so-caned direct evidence that the woving Farties contend should		
20	HED(US) employees—		
21	and (b) selected testimony of seven codefendant employees  See		
22	Ex. 105 (Deposition of Kenichi Hazuku (June 12, 2013)) at 101:5-23; Ex. 2, Toyama Dep. at		
23	29:23-25, 45:7-12; Ex. 106, (Deposition of Michael Son (February 5, 2013)) at 167:14-15, 20, 22-24; 168:2-4; <i>see also</i> Declaration of Eliot A. Adelson in Support of Hitachi Parties' Notice of		
24	Motion and Motion for Summary Judgment Based Upon the Lack of Evidence in Participation in the Alleged Conspiracy and Memorandum of Points and Authorities in Support Thereof ("Adelson		
25	Decl."), Ex. 16 (Deposition of Jing Song Lu (February 27, 2013)) at 259:12-17; Adelson Decl.,		
26	Ex. 19 (Deposition of Dae Eui Lee (January 16, 2013)) at 253:13-14, 21; Adelson Decl., Ex. 20 (Deposition of Deok-Yun Kim (March 27, 2013)) at 96:23-97:1, Adelson Decl., Ex. 23		
27	(Deposition of Hoon Choi (June 19, 2013)) at 118:22-24; 119:2-3; 119:9-14; 119:19-25.		
28	15		

1	Consequently, Plaintiffs are not required to produce a "smoking gun" and are permitted to
2	rely on circumstantial evidence and the reasonable inferences that may be drawn therefrom. <i>In re</i>
3	TFT-LCD (Flat Panel) Antitrust Litig., Case Nos. M 07-1827 SI, C 10-0117 SI, 2012 WL
4	6521463, at *1 (N.D. Cal. Dec. 13, 2012) ("TFT-LCD II"). "It is not necessary to find an express
5	agreement, either oral or written, in order to find a conspiracy, but it is sufficient that a concert of
6	action be contemplated and that defendants conform to the arrangement." Esco Corp. v. United
7	States, 340 F.2d 1000, 1008 (9th Cir. 1965) (citations omitted); see also In re Vitamins Antitrust
8	Litig., 320 F. Supp. 2d 1, 15 (D.D.C. 2004) ("Plaintiffs need not show (1) evidence of a formal
9	agreement, or (2) knowledge, on behalf of the Defendant, of every detail of the alleged
10	conspiracy.") (citations omitted); In re Linerboard Antitrust Litig., 504 F. Supp. 2d 38, 51-52
11	(E.D. Pa. 2007) ("There is often a fine line between legitimate business practices and unlawful
12	concerted action, and direct evidence-the smoking gun-of illegal conspiracy may not be
13	available.") (citation omitted). Nor must Plaintiffs show that each conspirator participated in
14	every aspect to the conspiracy to prevail, "for each conspirator may be performing different tasks
15	to bring about the desired result." Beltz Travel Serv., 620 F.2d at 1367 (citation omitted). "To the
16	extent that certain defendantscontend that there is no evidence that they in particular exchanged
17	capacity and production information, those defendants are still liable for the actions taken by other
18	in furtherance of the alleged conspiracy." In re TFT-LCD (Flat Panel) Antitrust Litig., Case No.
19	M 07-1827 SI,, 2011 WL 7724271, at *1 (N.D. Cal. Nov. 4, 2011) ("TFT-LCD I"). 61
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<sup>&</sup>lt;sup>61</sup> The cases cited by the Moving Parties do not hold otherwise. See MSJ at 12-13 (citing In re Vitamins Antitrust Litig., 320 F. Supp. 2d at 15 ("[A] common purpose or plan may be inferred from 'a development and collation of circumstances.")(citations omitted); Esco Corp., 340 F.2d at 1009 (affirming conviction without proof of written or oral agreements or participation in all aspects of the conspiracy); AD/SAT v. Assoc. Press, 181 F.3d 216, 234 (2d Cir. 1999) (finding that defendants' status as members of an association alone was insufficient to prove participation in the conspiracy); Eliason Corp. v. Nat'l Sanitation Found., 485 F. Supp. 1062, 1075 (E.D. Mich. 1977), aff'd, 614 F.2d 126 (6th Cir. 1980) (granting summary judgment where there was no evidence of illegal conduct by any defendant); Harlem River Consumers Co-op, Inc. v. Assoc. Grocers of Harlem, Inc., 408 F. Supp. 1251, 1269 (S.D.N.Y 1976) (identifying three types of (footnote continued)

Indeed, it is well settled in this Circuit that once Plaintiffs establish the existence of a conspiracy, an individual defendant is liable if the evidence shows "even a slight connection" between the defendant and the conspiracy. United States v. Perlaza, 439 F.3d 1149, 1177 (9th Cir. 2006) (citations omitted); See also United States v. Reed, 575 F.3d 900, 924 (9th Cir. 2009) ("The term 'slight connection' means that a defendant need not have known all the conspirators, participated in the conspiracy from its beginning, participated in all its enterprises, or known all its details. A connection to the conspiracy may be inferred from circumstantial evidence.") (citation omitted); Safeway Stores, Inc. v. FTC, 366 F.2d 795, 801 (9th Cir. 1966) ("Once the existence of the common scheme is established, very little is required to show that defendant became a party— 'slight evidence may be sufficient to connect a defendant to it.'") (citations omitted). As demonstrated herein, the evidence linking each Moving Party to the conspiracy is far from slight and, at minimum, creates triable issues of fact regarding each Moving Party's participation in the conspiracy.<sup>62</sup> B. The Moving Parties Are Liable for the Coordinated Acts of the Hitachi Enterprise.

Plaintiffs do not claim that the Moving Parties are liable based solely on their corporate affiliation. Rather, the evidence establishes that

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circumstantial evidence that "may contribute to or add up to a finding of conspiracy: motive to conspire, opportunity to conspire, and the consistency of the overt acts of each defendant with acts of the others"); In re Lithium Ion Batteries Antitrust Litig., Case No. 13-MD-2420 YGR, 2014 WL 309192, at \*13 (N.D. Cal. Jan. 21, 2014) (finding on a motion to dismiss that plaintiffs must plead more than "boilerplate assertions of an agency relationship with the parties whose participation in the conspiracy is more directly alleged"); In re Citric Acid Litig., 191 F.3d 1090, 1094 (9th Cir. 1999) (granting summary judgment where there was no direct evidence of participation in the conspiracy and circumstantial evidence would not allow for an inference of illegal activity).

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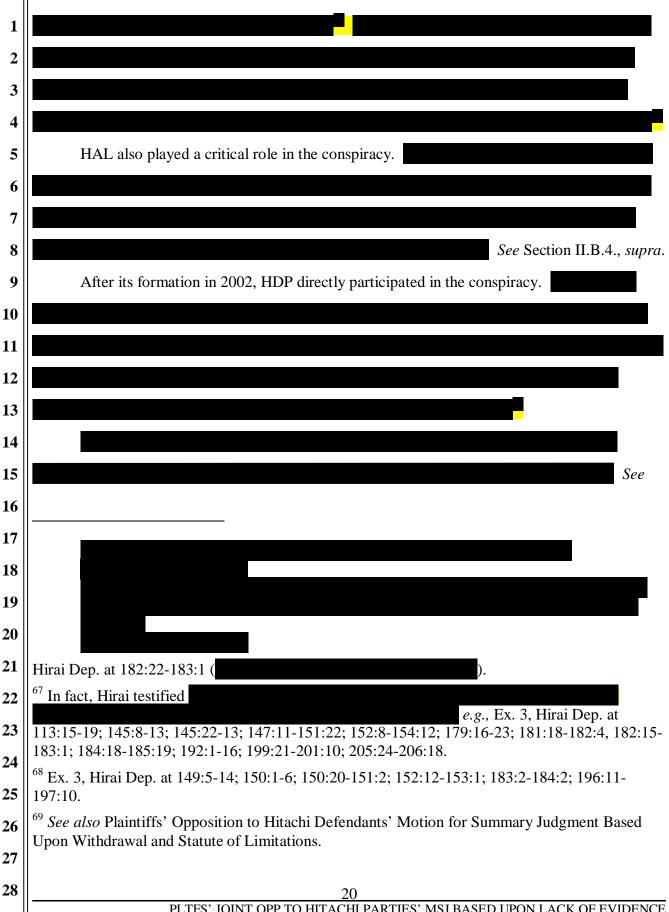
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<sup>62</sup> For the same reasons, the Moving Parties' argument that they cannot be held liable because they had "limited production and sales of CRTs during the alleged conspiracy" is irrelevant and also legally unsupported. See MSJ at 15-16. Coconspirators need not participate in every aspect of the conspiracy or for its entire duration to be liable. Esco Corp., 340 F.2d at 1006; Beltz Travel Serv., 620 F.2d at 1367.

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1	See Sections, II.A., II.C., supra.
	Such evidence renders the conspiratorial acts of Hitachi imputable to the Moving Parties.
	See, e.g., Carrier Corp. v. Outokumpu OYJ, 673 F.3d 430, 445-46 (6th Cir. 2012) (finding
	allegations that (a) the U.S. entities sold the overpriced product, (b) one of the U.S. entities
	"engaged in the production or sale" of the product in the U.S. or elsewhere, either "directly and/or
	through its affiliates and/or wholly-owned subsidiaries," and (c) "the variousentities were
	operated and deliberately portrayed to the outside world as a 'single global enterprise' in which
	key executives overlapped and vital management personnel rotated through positions on both
	sides of the Atlantic," sufficient to permit imputation of the conspiracy on the U.S. entities)
	(emphasis added).
	The Moving Parties' argument that "each of the Hitachi Parties operated as its own
	company" is unsupported. MSJ at 5. The Moving Parties offer <i>no</i> evidence supporting the
	purported independence of HDP or HAL, and
	<sup>63</sup> See Adelson, Ex. 6; Anderson Decl., Ex. 11, Heiser I Dep. at 33:11-34:17; 35:7-16.
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Such testimony only bolsters the substantial body of evidence that HTL controlled the Moving Parties and that Hitachi operated as a single CRT entity in the conspiracy, rendering the U.S. subsidiaries liable for the acts of the cartel as a whole. C. Each Moving Party Is Liable for Its Participation in the Conspiracy. Even if the Moving Parties were not implicated in the conspiracy by virtue of their role in the Hitachi global enterprise, substantial evidence establishes that each Moving Party participated in the conspiracy. <sup>64</sup> Ex. 2, Toyama Dep.at 32:11-33:3. Adelson Decl., Ex. 9. (footnote continued)



Sections II.B. and II.C., *supra*. While the Moving Parties may dispute "whether these exchanges of sensitive pricing information were permissible competitive behavior, *such disputes regarding the interpretation of evidence are not appropriate for resolution on summary judgment*." *TFT-LCD II*, 2012 WL 6521463, at \*1 (emphasis added) (denying summary judgment where "Plaintiffs have submitted, *inter alia*, evidence of exchanges of pricing and other proprietary LCD panel information with other defendants."). Whether each Moving Party specifically attended Glass Meetings does nothing to alter this conclusion. *See TFT-LCD II*, 2012 WL 6521463, at \*1, n.3 ("[C]laimed absence at the Crystal Meetings does not necessarily equate to a lack of participation in the conspiracy."). In sum, substantial evidence presents genuine issues of fact regarding the Moving Parties' participation in the conspiracy that are ripe for determination by a jury. <sup>71</sup>

### D. HDP Is Also Liable as a Successor in Interest.

Under both California law and the federal common law of this Circuit, successor corporations are liable for the acts of their predecessor if (1) the successor corporation expressly or impliedly agrees to assume liability, (2) the transaction amounts to a *de facto* merger, (3) the new corporation is merely a continuation of its predecessor, or (4) the transaction was fraudulently entered into in order to escape liability. *See In re Lithium Ion Batteries Antitrust Litig.*, Case No. 13-MD-2420 YGR, 2014 WL 4955377, at \*36, n.34 (N.D. Cal. Oct. 2, 2014) (citing *Atchison v. Brown & Bryant, Inc.*, 159 F.3d 358, 361 (9th Cir. 1998)). To establish that a new corporation is a mere continuation of its predecessor, a plaintiff must show that "(1) no adequate consideration was

<sup>&</sup>lt;sup>70</sup> See also City of Long Beach v. Standard Oil Co. of Cal., 872 F.2d 1401, 1406-07 (9th Cir. 1989) (denying summary judgment based on defendants' unusual efforts to maintain an elaborate three-cut exchange system for setting fuel prices that plaintiffs alleged were used to fix prices).

Moving Parties' reliance on *In re Baby Food Antitrust Litig.*, 166 F.3d 112, 133 (3d. Cir 1999) (finding "chit-chat" during chance encounters in the field among competitors' employees insufficient to support conspiracy allegations) is misplaced. *See* MSJ at 13-14. Likewise, the Moving Parties cite *In re Linerboard Antitrust Litig.*, 504 F. Supp. 2d at 53, for the premise that allegations of opportunity contacts alone are insufficient to survive summary judgment. But, here, Plaintiffs are not relying on opportunity contacts alone, so this premise is irrelevant.

1	given for the predecessor corporation's assets or (2) one or more persons were officers,		
2	directors, or stockholders of both corporations." Daewoo Elec. Am. Inc. v. Opta Corp., No. C 13-		
3	1247 JSW, 2013 WL 3877596, at *6-7 (N.D. Cal. Jul. 25, 2013) (citation omitted); see also		
4	Sunnyside Dev. Co. LLC v. Opsys Ltd., No. C. 05 0553 MHP, 2007 WL 2462142 (N.D. Cal. Aug.		
5	29, 2007).		
6			
7	No known consideration was paid by		
8	HDP, HTL remained the sole shareholder,		
9	Section II.B.5., supra. Thus, HDP was		
10	merely a continuation of HTL's Display Group and is, therefore, liable for its conduct and the		
11	earlier acts of HTL.		
12	v. conclusion		
13	As demonstrated herein, Plaintiffs have proffered significant evidence from which a		
14	reasonable jury could find each of the Moving Parties knowingly participated in the conspiracy.		
15	Because the Moving Parties have not met their burden of demonstrating an absence of genuine		
16	issues of material fact, the motion should be denied.		
17			
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**ECF CERTIFICATION** Pursuant to Local Rule 5-1(i), the filer attests that the concurrence in the filing of this document has been obtained from each of the above signatories. Dated: December 23, 2014 /s/ Jennie Lee Anderson Jennie Lee Anderson (203586) ANDRUS ANDERSON LLP 155 Montgomery Street San Francisco, CA 94104 Telephone: (415) 986-1400 Facsimile: (415) 986-1474 jennie@andrusanderson.com